


MEMORANDUM

July 3, 2013

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 19-13, Common Ownership Communities – Administrative Hearing – Attorney's Fees

Bill 19-13, Common Ownership Communities – Administrative Hearing – Attorney's Fees, sponsored by Councilmember Leventhal, was introduced on June 18. A Planning, Housing and Economic Development Committee worksession will be held at a later date.

Bill 19-13 would expand the authority of the Commission on Common Ownership Communities to award attorney's fees to a prevailing party in certain disputes. Under current law, the Commission can award attorney's fees to the prevailing party if the opposing party acts in bad faith or if the association documents permit the award of attorney's fees. Since the association documents normally only permit an award of attorney's fees to the association if it prevails in a case enforcing the association documents, a unit owner or occupant who prevails in a case against the association is rarely eligible for an award of attorney's fees. Bill 19-13 would permit the Commission to award attorney's fees to a unit owner or occupant who prevails in a dispute to enforce the association documents or a State or County law regulating common ownership communities.

The Bill would expire on September 1, 2016 in order to permit the Council to evaluate the Commission's new authority.

This packet contains:

Bill 19-13

Legislative Request Report

Circle #

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Bill No. 19-13
Concerning: Common Ownership
Communities – Administrative
Hearing – Attorney's Fees
Revised: June 6, 2013 Draft No. 2
Introduced: June 18, 2013
Expires: December 18, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Leventhal

AN ACT to:

- (1) expand the authority of the Commission on Common Ownership Communities to award attorney's fees to a prevailing party in certain disputes; and
- (2) generally amend the law governing common ownership communities.

By amending

Montgomery County Code
Chapter 10B, Common Ownership Communities
Section 10B-13

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 10B-13 is amended as follows:

10B-13. Administrative hearing.

* * *

(d) The hearing panel may award costs, including [a] reasonable attorney's [fee] fees, to any prevailing party if:

(1) [another] the losing party:

[(1)] (A) filed or maintained a frivolous dispute, or filed or maintained a dispute in [other than good] bad faith;

[(2)] (B) unreasonably refused to [accept] participate in mediation of a dispute, or unreasonably withdrew from ongoing mediation; or

[(3)] (C) substantially delayed or hindered the dispute resolution process without good cause[.];

(2) [The hearing panel may also award costs or attorney's fees if] an association document so requires and the award is reasonable under the circumstances; or

(3) the prevailing party is an owner or occupant of a dwelling unit who filed the dispute to enforce the association documents or a State or County law regulating common ownership communities.

The hearing panel may also require the losing party in a dispute to pay all or part of the filing fee.

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Sec. 2. The Amendments to Section 10B-13 contained in Section 1 of this Act apply to any dispute filed with the Commission after the date this Act takes effect.

Sec. 3. The Amendments to Section 10B-13 contained in Section 1 of this Act expire on September 1, 2016.

LEGISLATIVE REQUEST REPORT

Bill 19-13

Common Ownership Communities – Administrative Hearing – Attorney's Fees

DESCRIPTION:	Bill 19-13 would expand the authority of the Commission on Common Ownership Communities to award attorney's fees to a prevailing party in certain disputes.
PROBLEM:	Under current law, an association is often eligible for an award of attorney's fees if it prevails, but a unit owner or occupant is not.
GOALS AND OBJECTIVES:	Level the playing field between the association and a unit owner or occupant in a dispute before the Commission.
COORDINATION:	Office of Consumer Protection and the Commission on Common Ownership Communities.
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, 240-777-7895
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Not applicable

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